

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARTIN J. WALSH,
SECRETARY OF LABOR
U.S. DEPARTMENT OF LABOR,

Plaintiff,

v.

PACKERS SANITATION SERVICES, INC.,
LTD.,

Defendant.

No. CV: 4:22-CV-03246

**DECLARATION OF PATRICK M. DALIN
IN SUPPORT OF DEFENDANT’S BRIEF
IN OPPOSITION TO THE SECRETARY’S
MOTION FOR PRELIMINARY
INJUNCTION ORDER**

I, Patrick M. Dalin, declare and state as follows:

1. I am over the age of eighteen and competent to testify to the matters herein. The statements herein are true and correct based upon my personal knowledge.

2. I am an attorney of record for Packers Sanitation Services, LLC, named in the Complaint as Packers Sanitation Services, Inc., Ltd. (“PSSI” or the “Company”) in the above-captioned matter. I make this declaration based on personal knowledge and in support of Defendant’s Brief in Opposition to the Secretary’s Motion for Preliminary Injunction Order.


3. Attached hereto as Exhibit A is a true and correct copy of the emails exchanged between counsel for the parties on November 9, 2022.

4. Attached hereto as Exhibit B is a true and correct REDACTED copy of the emails exchanged between counsel for the parties on November 11, 2022.

5. Attached hereto as Exhibit C is a true and correct REDACTED copy of the emails exchanged between counsel for the parties on November 12 -14, 2022.

I hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed this 2nd day of December, 2022 in Philadelphia, Pennsylvania.



Patrick M. Dalin

Exhibit A

From: [Dalin, Patrick](#)
To: [Martin, Traci E - SOL](#); [Flores, Kim - SOL](#); [O'Reilly, Laura M - SOL](#); [Renn-Scanlan, Ambriel - SOL](#)
Cc: [Lau, Annie](#); [Boone, Susan](#); [Coffey, Randy](#)
Subject: RE: Walsh vs. PSSI (Case No. 4:22-cv-3246)
Date: Wednesday, November 9, 2022 10:21:00 PM

Counsel,

We are surprised that you filed this motion without first attempting to resolve the matter with PSSI. PSSI prohibits the unlawful employment of minors and has multiple procedures and controls in place to prevent that from occurring. These measures include mandatory use of the federal government's E-verify system in all states, even where not required by state law. As you know, however, PSSI must accept documents that reasonably appear to be genuine and relate to the employees presenting them or risk committing unfair documentary practices. If any employees have misrepresented their identity and/or age, PSSI will promptly remedy the matter. Particularly with regards to minors, it is of the utmost importance to PSSI that it remove any such employee from the workplace.

To that end, PSSI will alleviate the need for you to obtain an order from the Court directing PSSI not to employ minors in violation of the FLSA. Please provide the names of the minors that you discuss in your motion, as well as the evidence that you collected from third parties that establishes that the workers are minors, and PSSI will terminate their employment immediately.

Furthermore, if, going forward, you identify any other workers you believe to be unlawfully employed minors, please identify those individuals to us. PSSI will provide to you the personnel documents for any such employees (assuming that you do not already have everything in light of PSSI's voluminous production of records to date). PSSI will also arrange for Wage and Hour to interview the employees. Of course, if any such employees are found by DOL to be minors, PSSI will terminate them immediately.

Lastly, we are disappointed to see your allegations that PSSI interfered in DOL's investigation. Your office is aware that PSSI worked an extraordinary number of hours to gather and produce the documents that DOL requested. With regards to the incident/accident reports that you allege PSSI denied you access, your Solicitor's Office colleague, attorney Julia Napier, informed me on November 1st that, in fact, no PSSI employee denied access to any such records. Moreover, PSSI produced all of the requested accident/injury reports in the dropbox production to DOL. DOL never complained to PSSI about any interference with employee interviews. Moreover, if you would have requested interviews, or follow-up interviews, with any employees, PSSI would have made the necessary arrangements.

PSSI remains committed to cooperating with DOL's investigation, and, as mentioned above, will terminate the employment of any minors employed at PSSI consistent with its strict prohibition against employing anyone under the age of 18. Please let us know who those employees are so that PSSI may resolve the matter immediately.

Thank you,



Patrick Dalin
Of Counsel

Fisher & Phillips LLP

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On the Front Lines of Workplace LawSM

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

From: Martin, Traci E - SOL <Martin.Traci.E@dol.gov>

Sent: Wednesday, November 9, 2022 4:42 PM

To: Dalin, Patrick <pdalin@fisherphillips.com>; Lau, Annie <alau@fisherphillips.com>; Coffey, Randy <rcoffey@fisherphillips.com>; Boone, Susan <sboone@fisherphillips.com>

Cc: Flores, Kim - SOL <Flores.Kim@DOL.GOV>; O'Reilly, Laura M - SOL <O'Reilly.Laura.M@dol.gov>; Renn-Scanlan, Ambriel - SOL <Renn-Scanlan.Ambriel@dol.gov>

Subject: Walsh vs. PSSI (Case No. 4:22-cv-3246)

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Counsel,

Please find the attached documents filed this afternoon by the Secretary of Labor in the United States District Court for the District of Nebraska against your client, PSSI: (1) Complaint; (2) Motion for a Temporary Restraining Order and Preliminary Injunction; (3) Brief in Support of the Motion for a Temporary Restraining Order and Preliminary Injunction; and (4) thirteen exhibits in support of the brief. Pursuant to Federal Rule of Civil Procedure 65(a), please consider this email the Secretary's notice.

Traci Martin

Senior Trial Attorney

Office of the Solicitor

U.S. Department of Labor

2300 Main Street, Suite 10100

Kansas City, MO 64108

martin.traci.e@dol.gov

(816) 285-7272

(816) 285-7287 (fax)

Until further notice, please direct all communications to me via phone or email. Please do not send correspondence by paper mail, courier, or fax to the Kansas City Solicitor's Office.

Exhibit B

From: [Dalin, Patrick](#)
To: [Renn-Scanlan, Ambriel - SOL](#); [Coffey, Randy](#); [Martin, Traci E - SOL](#)
Cc: [Scott, Marie](#); [O'Hara, Gigi](#)
Subject: RE: Walsh v. PSSI -- Discussions
Date: Friday, November 11, 2022 4:11:00 PM

Ambriel,

Given that the Court has issued a TRO which requires PSSI “to immediately cease and refrain” from unlawfully employing minors, we renew our request for DOL to identify those workers whom it represents are minors. In addition, we request that DOL provides for PSSI’s review and evaluation the documentation and other evidence that it relied on to conclude that these workers are minors. PSSI is committed to its policy prohibiting the employment of persons under the age of 18, and also fully intends to comply with the Court’s order. If these workers are not allowed to work in the facilities, PSSI needs DOL to identify them so that it can remove them from the workplace.

We appreciate your position on our call yesterday that PSSI could potentially identify any such persons with its own investigation, which we are conducting, as we discussed. PSSI, however, is not in possession of the third-party evidence (such as records from local schools) that DOL possesses. Moreover, if, hypothetically, PSSI is able to identify minors not permitted to work in the facility, it could not know whether it has identified all of the persons whom DOL contends are minors. This would unfairly set PSSI up for a second set of allegations from DOL despite its best efforts.

On the call you asserted that the identities of these workers are protected by the informant’s privilege. We respect the interests that the privilege aims to protect. However, as you are aware, the informant’s privilege is a qualified privilege that must give way where the employer’s need for the information outweighs the public interest in maintaining the privilege. Here, PSSI needs the information in order to comply with an order of the Court. Furthermore, the disclosure of this information in this circumstance does not undermine the public interest but in fact serves an important public interest—the prevention and remediation of possible child labor violations.

So that PSSI can ensure its full compliance with the Court’s order, we request that DOL produce this information as soon as possible. We look forward to discussing this on Monday.

Thank you and have a good weekend,



Patrick Dalin
Of Counsel

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From: Renn-Scanlan, Ambriel - SOL <Renn-Scanlan.Ambriel@dol.gov>
Sent: Friday, November 11, 2022 3:49 PM
To: Coffey, Randy <rcoffey@fisherphillips.com>; Martin, Traci E - SOL <Martin.Traci.E@dol.gov>
Cc: Dalin, Patrick <pdalin@fisherphillips.com>; Scott, Marie <mtscott@fisherphillips.com>; O'Hara, Gigi <Gigi.OHara@KutakRock.com>
Subject: Re: Walsh v. PSSI -- Discussions

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Hi Randy,

Acknowledging receipt.

We will be in touch on Monday.

Thanks,

Ambriel

From: Coffey, Randy <rcoffey@fisherphillips.com>
Sent: Friday, November 11, 2022 2:25 PM
To: Martin, Traci E - SOL <Martin.Traci.E@dol.gov>; Renn-Scanlan, Ambriel - SOL <Renn-Scanlan.Ambriel@dol.gov>
Cc: Dalin, Patrick <pdalin@fisherphillips.com>; Scott, Marie <mtscott@fisherphillips.com>; O'Hara, Gigi <Gigi.OHara@KutakRock.com>
Subject: Walsh v. PSSI -- Discussions

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[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Randy



J. Randall Coffey

Partner

Fisher & Phillips LLP

46 Penn Centre | 4622 Pennsylvania Avenue | Suite 910 | Kansas City, MO 64112

jcoffey@fisherphillips.com | O: (816) 842-8770

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Exhibit C

From: Coffey, Randy <rcoffey@fisherphillips.com>
Sent: Monday, November 14, 2022 11:37 AM
To: Renn-Scanlan, Ambriel - SOL <Renn-Scanlan.Ambriel@dol.gov>; Martin, Traci E - SOL <Martin.Traci.E@dol.gov>
Cc: 'O'Hara, Gigi' <Gigi.OHara@KutakRock.com>; Dalin, Patrick <pdalin@fisherphillips.com>; O'Reilly, Laura M - SOL <OReilly.Laura.M@dol.gov>; Napier, Julia M - SOL <Napier.Julia.M@dol.gov>
Subject: RE: Walsh v. PSSI -- TRO and Compliance Steps

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We understood your position from the call. Just as an FYI, any employee who is suspended pending provision of documentation verifying their age is being suspended with pay.

I think it probably is obvious from the extensive steps that the Company has taken over the holiday weekend as described in my email from Saturday (below) that it is quickly engaging in expansive efforts to determine the facts that may exist and to address any issues promptly and appropriately. [REDACTED]

[REDACTED]

our call last Thursday. We appreciate your cooperation and look forward to discussing this matter with you further.

J. Randall Coffey
Partner
Fisher & Phillips LLP
4922 Pennsylvania Ave. | Suite 910 | Kansas City, MO 64112
O: (816) 842-8770

From: Renn-Scanlan, Ambriel - SOL <Renn-Scanlan.Ambriel@dol.gov>
Sent: Monday, November 14, 2022 11:17 AM
To: Coffey, Randy <rcoffey@fisherphillips.com>; Martin, Traci E - SOL <Martin.Traci.E@dol.gov>
Cc: 'O'Hara, Gigi' <Gigi.OHara@KutakRock.com>; Dalin, Patrick <pdalin@fisherphillips.com>; O'Reilly, Laura M - SOL <OReilly.Laura.M@dol.gov>; Napier, Julia M - SOL <Napier.Julia.M@dol.gov>
Subject: RE: Walsh v. PSSI -- TRO and Compliance Steps

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Randy,

Additionally, as we discussed on Thursday, any discrimination or retaliation against any family members/relatives of any of the minor children is unacceptable. I think we made this clear on our call, but if you have any questions or concerns about that, please let me know.

Thanks,

Ambriel

From: Renn-Scanlan, Ambriel - SOL

Sent: Monday, November 14, 2022 11:05 AM

To: Coffey, Randy <rcoffey@fisherphillips.com>; Martin, Traci E - SOL <Martin.Traci.E@dol.gov>

Cc: O'Hara, Gigi <Gigi.OHara@KutakRock.com>; Dalin, Patrick <pdalin@fisherphillips.com>; O'Reilly, Laura M - SOL <OReilly.Laura.M@dol.gov>; Napier, Julia M - SOL <Napier.Julia.M@dol.gov>

Subject: RE: Walsh v. PSSI -- TRO and Compliance Steps

Randy,

Thank you for your emails. We appreciate the updates.

A few things.

First, Julia Napier out of our SOL Chicago office is working with Wage and Hour on the production of documents from PSSI's corporate office. There are some significant concerns about the production so far, large gaps of information in certain facilities, missing workers completely, etc. Julia will be in touch in the next few days as to the concerns. I have asked her to reach out directly to you all, and loop the rest of the team in, so we are all on the same page. Obviously, we will need these issues attended to as we move forward.

[REDACTED]

[REDACTED]

[REDACTED]

Third, we will not provide any underlying documentation about any of the minors.

[REDACTED]

Best,

Ambriel

From: Coffey, Randy <rcoffey@fisherphillips.com>

Sent: Saturday, November 12, 2022 5:59 PM

To: Renn-Scanlan, Ambriel - SOL <Renn-Scanlan.Ambriel@dol.gov>; Martin, Traci E - SOL <Martin.Traci.E@dol.gov>

Cc: O'Hara, Gigi <Gigi.OHara@KutakRock.com>; Dalin, Patrick <pdalin@fisherphillips.com>

Subject: Walsh v. PSSI -- TRO and Compliance Steps

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Ambriel and Traci,

In light of the TRO issued late on Thursday, I wanted to update you about steps that our client, PSSI, has taken yesterday and today, as well as steps that the Company has underway.

First, the Company has informed all management employees of the TRO and its provisions.

Second, the Company has begun an immediate ID check at each site or location, to identify any employee who appears not to be 18 or over. Any employee who even arguably may appear to be under 18 years of age will not be permitted to work until the employee has provided valid identification reflecting the employee's date of birth so that the Company can verify that the employee is 18 or older.

Third, the Company is beginning an expedited audit at all locations to review all employee photographs and other documentation to identify any employee who appears even to possibly be under the age of 18. Additional follow-up and verification then will occur for those individuals, including by comparing identification documents and information that the Company already has on file reflecting dates of birth or age with verification documents provided by an employee as part of this audit to ensure that the currently provided verification documents are consistent with documents previously provided. The Company is beginning this process at the facilities at which DOL executed the warrants, and the process then will immediately move to the other 47 facilities for which DOL has collected data, followed by all of the remaining PSSI facilities. This process will accelerate over the next 2-3 days as we obtain additional outside assistance to ensure that this audit is completed as promptly as possible. The process will have Quality Control procedures to ensure that the results are as reliable as possible.

Obviously, the ID check in the second item above will occur immediately, as noted above. The expedited audit and verification process referenced in the third point will take somewhat longer, but the Company has every intention of completing this portion of the process as quickly as possible.

In the meantime, if DOL has further suggestions as to the Company's compliance with the TRO, we would be happy to receive them from you. We do hope that DOL is cognizant of the fact that the audit process outlined above for hundreds of locations and many thousands of employees cannot be completed in only a day or two, but that the Company is diligently pursuing this process.

[REDACTED]

[REDACTED] We look forward to DOL's comments regarding the process we have set forth and also would request that DOL please promptly let us know if it believes the course we are pursuing appears to it to be in any way unacceptable or in violation of the provisions of the TRO entered by Judge Gerrard so that we have an opportunity to evaluate those concerns and make any modifications in the event that you believe the Company is not in compliance. Thank you for your consideration.

Randy



J. Randall Coffey

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